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9 **UNITED STATES DISTRICT COURT**

10 **FOR THE WESTERN DISTRICT OF WISCONSIN**

11 SK b/n/f GINA KILDAHL and on behalf
12 of themselves and those similarly
13 situated,

14 Plaintiff,

15 vs.

16 SCHOOL DISTRICT OF FALL
17 CREEK; SCHOOL DISTRICT OF
18 FALL CREEK BOARD OF
19 EDUCATION; BROCK WRIGHT.;
20 ERIC RYAN ; ANNMARIE
21 ANDERSON; JILL GESKE;
22 COURTNEY KNEIFL; JOE
23 SANFELIPPO ; and Does 1-10 on behalf
24 of themselves and those similarly
25 situated,

26 Defendants.

Case No. 3:21-cv-00637-slc S.K.

**FIRST AMENDED COMPLAINT
AND REQUEST FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1. Due Process, Affirmative Duty to
Protect-State Created Danger. (42
U.S.C. § 1983)
2. Public Nuisance.

**FIRST AMENDED COMPLAINT AND REQUEST FOR DECLARATIVE
AND INJUNCTIVE RELIEF**

Plaintiff, GINA KILDAHL individually, as the Next Friend of Minor SK, and
as class representative for all K-12 public school students, their Next Friends, and
Parents and Legal Guardians in the State of Wisconsin brings this Complaint against

Defendants, SCHOOL DISTRICT OF FALL CREEK, SCHOOL DISTRICT OF FALL CREEK BOARD OF EDUCATION, BROCK WRIGHT, ERIC RYAN, ANNMARIE ANDERSON, JILL GESKE, COURTNEY KNEIFL, JOE SANFELIPPO, and Does 1-10 as representatives of a class of Wisconsin Defendant School Districts, School Boards, School Board Members and Superintendents recklessly refusing to implement the reasonable and scientifically supported COVID-19 mitigation strategies recommended by the Wisconsin Department of Public Instruction and the Centers for Disease Control. The failure by this class of Defendants to take adequate Covid-19 related safety measures has needlessly and recklessly placed Wisconsin school children and their communities at risk of serious illness and death. This Plaintiff class vs Defendant class action seeks injunctive and declaratory relief to remedy the failure of Wisconsin School Districts to adequately protect their students and communities.

INTRODUCTION

1. This Plaintiff class vs Defendant Class action seeks injunctive relief from a class of Defendants for violating various student rights under the United States Constitution, state law, and abatement of a public nuisance under Federal Common law and Wisconsin state law in connection with the refusal of many Wisconsin school boards to implement reasonable Covid-19 mitigation strategies.

JURISDICTION AND VENUE

2. This civil action is brought for the redress of alleged deprivations of constitutional rights as protected by 42 U.S.C. §§ 1983, 1985, 1986, 1988, and the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331, 1343, and 1367 and statutory and Constitutional provisions.

1 3. Jurisdiction is also proper under Federal Common Law and 28 U.S.C.
2 § 1367(a).

3 4. Venue is proper in this Court under 28 U.S.C. § 1391(b), because Defendants
4 reside in, and all incidents, events, and occurrences giving rise to this action
5 occurred in, the County of Eau Claire, Wisconsin, within the Western District
6 of Wisconsin.

7 **PARTIES**

8 5. At all relevant times, GINA KILDAHL (“PLAINTIFF”) is mother and Next
9 Friend of Minor SK, both of whom were and are residents of Eau Claire
10 County, Wisconsin

11 6. At all relevant times Minor SK was a student in the School District of
12 Waukesha at Fall Creek Elementary School.

13 7. GINA KILDAHL also brings this suit as class representative for all K-12
14 students and their Next Friends.

15 8. At all times herein mentioned, The Defendant, SCHOOL DISTRICT OF
16 FALL CREEK BOARD OF EDUCATION (hereinafter “BOARD”) employs
17 and controls the staff, operates, and exercises policy making authority over
18 Defendant SCHOOL DISTRICT OF FALL CREEK (hereinafter FCSD).

19 9. Defendant, BROCK WRIGHT (hereinafter “WRIGHT”) was at all times
20 relevant to this action President of the BOARD and acting under the color of
21 law. He is sued in his official capacity for injunctive relief only.

22 10. Defendant, JOE SANFELIPPO (hereinafter “SANFELIPPO”) was at all
23 times relevant to this action superintendent of FCSD and acting under the
24 color of law. He is sued in his official capacity for injunctive relief only.

25 11. Defendant, ANNMARIE ANDERSON (hereinafter “ANDERSON”) was at
26 all times relevant to this action Clerk of the BOARD and acting under the
27 color of law. He is sued in his official capacity for injunctive relief only.
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1 12. Defendant, JILL GESKE (hereinafter “GESKE”) was at all times relevant to
2 this action Treasurer of the BOARD and acting under the color of law. He is
3 sued in his official capacity for injunctive relief only.

4 13. Defendant, COURTNEY KNEIFL (hereinafter “KNEIFL”) was at all times
5 relevant to this action a member of the BOARD and acting under the color of
6 law. He is sued in his official capacity for injunctive relief only.

7 14. Defendant, ERIC RYAN (hereinafter “RYAN”) was at all times relevant to
8 this action Vice President of the BOARD and acting under the color of law.
9 She is sued in his official capacity for injunctive relief only.

10 15. At all relevant times, DOES 1 through 10 are employees, administrators, or
11 individuals with other policy making authority over the SCHOOL DISTRICT
12 OF FALL CREEK and are sued in their official capacity for injunctive relief
13 only.

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15 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

16 16. PLAINTIFF repeats and realleges each and every allegation in paragraphs 1
17 through 15 of this Complaint with the same force and effect as if fully set
18 forth herein.

19 17. COVID-19 also known as COVID and the coronavirus, is a contagious
20 disease caused by severe acute respiratory syndrome coronavirus 2 or (SARS-
21 CoV-2)

22 18. The SARS-CoV-2 virus has an incubation period between two and fourteen
23 days and is highly contagious and deadly. The virus causes a myriad of
24 symptoms ranging from a fever or chills, a cough, shortness of breath or
25 difficulty breathing, fatigue, muscle or body aches, a headache, a loss of taste
26 or smell, a sore throat, congestion or runny nose, nausea or vomiting, diarrhea,
27 organ failure, and respiratory failure.
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1 19.The SARS-CoV-2 virus was originally discovered in late 2019 and spread
2 globally within mere months.

3 20.The World Health Organization declared Covid-19 a pandemic on March 11,
4 2020.

5 21.In December of 2020 the Delta variant of the SARS-CoV-2 virus emerged in
6 India and was detected in the United States in March of 2021.

7 22.The Delta variant of the SARS-CoV-2 virus has proved to be more contagious
8 than the original variant and is capable of causing deadly infections in
9 vaccinated individuals.

10 23.At the time of this filing, there have been over 40 million confirmed Covid-19
11 cases in the United States causing over 800,000 deaths.

12 24.At the time of this filing, there have been over 890,000 confirmed Covid-19
13 cases in Wisconsin causing over 8,900 deaths.

14 25.Individuals can take steps to limit the spread of Covid-19, these steps include
15 getting vaccinated and wearing facemasks.

16 26.Currently there are three different vaccines available, only one of which is
17 available to children from 12-17. No vaccine is currently available to children
18 under 12.

19 27.The Covid-19 pandemic drastically effected K-12 schooling during the Spring
20 of 2020. All Wisconsin schools were shut down by order of Governor Evers
21 and most students were taught virtually.

22 28.During the 2020-2021 School year, schooling throughout Wisconsin was
23 either conducted virtually, or in person with Covid-19 mitigation strategies in
24 place including universal masking.

25 29.When the 2021-2022 School year began, many school districts, including the
26 School District of Fall Creek brought students back without adequate Covid-
27 19 mitigation measures in place including mandatory face masking, social
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1 distancing, or contact tracing, creating an incredibly dangerous learning
2 environment.

3 30. On August 10, 2021, the Wisconsin Department of Public Instruction
4 (hereinafter “DPI”) released a publication entitled COVID-19 Infection
5 Control and Mitigation Measures for Wisconsin Schools 2021/2022.

6 31. In the COVID-19 Infection Control and Mitigation Measures for Wisconsin
7 Schools 2021/2022, the Wisconsin Department of Public Instruction makes
8 several recommendations for steps Wisconsin schools should take to limit the
9 spread of Covid-19.

10 32. Specifically, the DPI recommends that schools encourage children and staff
11 who have been exposed to COVID-19 to stay home and get tested, encourage
12 good hand hygiene, promote vaccination to eligible students and staff,
13 maintain a policy of physical distancing between students and staff, limit non-
14 essential visitation to the schools, establish contact tracing programs, improve
15 ventilation where possible and disinfect surfaces within the school on a daily
16 basis.

17 33. Finally, the DPI recommends that all Wisconsin schools institute mandatory
18 masking policies for students and staff.

19 34. On August 5, 2021, the Centers for Disease Control (hereinafter “CDC”)
20 published their most recent Guidance for COVID-19 Prevention in K-12
21 Schools.

22 35. The CDC recommends that schools encourage children and staff who have
23 been exposed to COVID-19 to stay home and test, encourage good hand
24 hygiene, promote vaccination to eligible students and staff, maintain a policy
25 of physical distancing between students and staff, limit non-essential visitation
26 to the schools, establish contact tracing programs, improve ventilation where
27 possible and disinfect surfaces within the school on a daily basis.
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1 36.The CDC also recommends that schools implement universal masking
2 policies.

3 37.The CDC has found that universal masking policies drastically reduce the rate
4 of Covid-19 infections in schools.

5 38. Wisconsin School districts are all implementing different Covid-19 mitigation
6 policies, many of which recklessly ignore DPI and CDC recommendations.

7 39.The School Districts refusing to implement Covid-19 mitigation strategies in
8 their schools are functionally hosting daily “super spreader” events.

9 40.During the Spring of 2020, The School District of Fall Creek held classes
10 remotely, this policy continued sporadically during the 2020-2021 school
11 year. When School District of Fall Creek brought students back to in person
12 learning the school district had a robust Covid-19 mitigation strategy that
13 included mandatory masking.

14 41. During the 2020-2021 School year SK attended Fall Creek Elementary
15 School which had several different Covid-19 infection mitigation strategies in
16 place. These strategies included universal masking and social distancing.

17 42. The Board of Education for the School District of Fall Creek voted to end
18 many of their Covid-19 mitigation policies, including their universal masking
19 requirement for the 2021-2022 school year.

20 43.Bringing groups of unmasked people together increases the risk of Covid-19
21 transmission as Covid-19 is spread via airborne transmission.

22 44.When the 2021-2022 School year began, SK returned to school and wore a
23 mask daily.

24 45.Many of SK’s classmates choose not to wear masks to school.

25 46.On September 20, 2021, one of SK’s classmates tested positive for Covid-19

26 47.On September 24, 2021, another of SK’s classmates tested positive for Covid-
27 19.

28 48.SK’s sick classmate did not wear a mask to school.

1 49. On September 27, 2021, SK tested positive for Covid-19.

2 50. After SK tested positive for Covid-19, Plaintiff chose to quarantine SK and he
3 missed two weeks of school.

4 **FIRST CLAIM FOR RELIEF**

5 **Due Process, Affirmative Duty to Protect-State Created Danger (42**
6 **U.S.C. § 1983)**

7 **(SK b/n/f GINA KILDAHL and on behalf of those similarly situated, Against**
8 **SCHOOL DISTRICT OF FALL CREEK; SCHOOL DISTRICT OF FALL**
9 **CREEK BOARD OF EDUCATION; BROCK WRIGHT.; ERIC RYAN ;**
10 **ANNMARIE ANDERSON; JILL GESKE; COURTNEY KNEIFL; JOE**
11 **SANFELIPPO ; and Does 1-10 on behalf of themselves and those similarly**
12 **situated,)**

13 51. PLAINTIFF repeats and re-alleges each and every allegation in paragraphs 1
14 through 50 of this Complaint with the same force and effect as if fully set
15 forth herein.

16 52. SK and those similarly situated have a cognizable right under the Fourteenth
17 Amendment to the United States Constitution to be safe from state created
18 dangers while in school.

19 53. At the beginning of the Covid-19 Pandemic the schools within FCSD were
20 closed by Emergency Order of Governor Evers on April 16, 2020, as was
21 every other school in the State of Wisconsin

22 54. Due to the school closures, FCSD and nearly every other school district in the
23 State of Wisconsin transitioned to virtual learning.

24 55. FCSD chose to bring their students back to school and reinstituted in person
25 learning during the 2020-2021 School year, placing their students in danger of
26 Covid-19 infection.

27 56. FCSD removed their COVID-19 mitigation measures further placing their
28 students in danger of a Covid-19 infection.

1 57.FCSD has also resumed extracurricular activities which currently do not have
2 adequate Covid-19 mitigation measures in place, this further increases the
3 opportunity for a Covid-19 outbreak in the FCSD schools.

4 58.FCSD and the BOARD are also currently allowing visitors and volunteers to
5 enter the FCSD schools without masks, Covid-19 screenings, or requiring
6 negative test results. Each visitor and volunteer in the FCSD schools brings
7 with them the possibility of a Covid-19 outbreak.

8 59.Similarly, employees at the FCSD schools are not universally masking.

9 60.By bringing students back to class without adequate Covid-19 mitigation
10 strategies around unmasked staff, reinstituting extracurricular activities, and
11 allowing potentially contagious visitors and volunteers into the schools
12 without masks, FCSD and the BOARD threw students into a Covid-19 “snake
13 pit” creating an affirmative duty to keep their students safe from Covid-19.

14 61.The FCSD and the BOARD’S reckless refusal to implement reasonable
15 Covid-19 mitigation measures was the direct and proximate cause SK’s
16 infection and illness.

17 62. By throwing SK and the rest of the FCSD students into the Covid-19 “snake
18 pit” FCSD and the BOARD created an affirmative duty under the Fourteenth
19 Amendment to the Constitution of the United States of America to maintain
20 adequate Covid-19 mitigation measures to protect their students.

21 63.FCSD and the BOARD are aware that by removing their COVID-19
22 mitigation measures they are needlessly and recklessly endangering the health
23 and safety of their students.

24 64.FCSD and the BOARD’s refusal to implement the reasonable Covid-19
25 mitigation strategies recommended by the CDC and the DPI is reckless and
26 shocks the conscious.

27 65.As a result of the unconstitutional conduct of the Defendants, SK was infected
28 with Covid-19 and suffered needlessly.

66. PLAINTIFF brings this claim for Declaratory and Injunctive Relief as Next Friend of SK and Plaintiff class representative.

SECOND CLAIM FOR RELIEF

PUBLIC NUISANCE

(PLAINTIFF and similarly situated individuals against all Defendants and those similarly situated)

67. PLAINTIFF repeats and re-alleges each and every allegation in paragraphs 1 through 66 of this Complaint with the same force and effect as if fully set forth herein.

68. The Covid-19 pandemic has been a public health disaster in Wisconsin and the United States a whole.

69. The Covid-19 pandemic has killed over 8,900 Wisconsinites and overwhelmed our healthcare systems.

70. The general public has the right to be free from unnecessary exposure to infectious diseases like Covid-19.

71. The general public and Wisconsin communities have a public health interest in limiting the spread of Covid-19.

72. By holding classes without adequate Covid-19 mitigation measures the BOARD and FCSD are causing Covid-19 to spread within the district's schools.

73. SK and other students within FCSD are being needlessly infected with Covid-19 due to the reckless conduct of FCSD and the BOARD. These infected students then leave school and spread Covid-19 throughout the community.

74. By holding classes without adequate Covid-19 mitigation measures the FCSD and BOARD are knowingly, needlessly, unreasonably, and recklessly exposing the public to Covid-19, interfering with the general public's right to

1 be free from unnecessary exposure to infectious diseases like Covid 19, and
2 endangering public health.

3 75. FCSD and the BOARD's reckless and unreasonable conduct caused special
4 injuries to SK. SK became infected with Covid-19 forcing him into
5 quarantine and to miss school.

6 76. PLAINTIFF brings this claim for Injunctive and Declaratory relief on behalf
7 of SK and on behalf of all similarly situated individuals.

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9 **CLASS ACTION ALLEGATIONS**

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11 77. PLAINTIFF repeats and re-alleges each and every allegation in paragraphs
12 1 through 76 of this Complaint with the same force and effect as if fully set
13 forth herein.

14 78. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23 as
15 the named and absent Defendants have acted or refused to act on grounds
16 generally applicable to the class, making final Declaratory and Injunctive
17 relief appropriate.

18 79. Pursuant to Federal Rules of Civil Procedure 23(a) and (b), Plaintiff brings
19 this action on behalf of SK, and the class, particularly the following Statewide
20 class of similarly situated persons defined as all K-12 students attending
21 public schools in the state of Wisconsin who have become infected with
22 Covid-19 at school and their Next Friends.

23 80. Pursuant to Federal Rules of Civil Procedure 23(a) and (b), Plaintiff brings
24 this action against a class of Defendants, particularly a Statewide class of
25 similarly situated School Boards, School Board members and school districts
26 defined as all K-12 public schools failing to implement CDC and DPI
27 guidelines and recommendations for Covid-19 mitigation.
28

1 81. This action has been brought and may properly be maintained as a class
2 action as it both Plaintiff and Defendant classes satisfy the numerosity,
3 commonality, typicality and adequacy requirements of Rule 23(a)

4 82. The Plaintiff Class consists of all public-school K-12 students who have
5 been infected with Covid-19 while at school, satisfying the numerosity
6 requirement.

7 83. The Defendant Class consists of school boards, school board members,
8 superintendents and school districts refusing to implement the Covid-19
9 mitigation guidance and recommendations for K-12 Schools from the DPI
10 and CDC satisfying the numerosity requirement.

11 84. The claims of Plaintiff as next friend of SK share common questions of law
12 and fact with the claims of the absent members of the Plaintiff Class
13 satisfying the commonality requirement.

14 85. The defenses and conduct of the named and absent Defendant Class
15 members share common aspect of law and fact satisfying the commonality
16 requirement.

17 86. The claims of Plaintiff as next friend of SK have a common origin and share
18 a common basis with the absent class members. Their claims originate from
19 reckless refusal of school boards and school districts to implement reasonable
20 Covid-19 mitigation measures. As such, the Plaintiff class meets the
21 typicality requirement.

22 87. The conduct of the named and absent Defendants in this action is virtually
23 identical. They have all recklessly refused to implement reasonable Covid-19
24 mitigation measures. As such, both the named and absent Defendant class
25 members should have defenses with a common origin which will share a
26 common basis meeting the typicality requirement.
27
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1 88. Plaintiff is willing and prepared to serve the Court and proposed class in a
2 representative capacity with all of the obligations and duties material hereto.
3 She will fairly and adequately protect the interest of the class and has no
4 interests adverse to, or which directly and irrevocably conflict with, the
5 interests of other members of the class. She has also engaged the services of
6 counsel indicated below. Said counsel is experienced in civil rights and class
7 litigation, will adequately prosecute this action, and will assert, protect and
8 otherwise well represent the named class representatives and absent class
9 members.

10 89. The named Defendants are all from the FCSD and should have the means to
11 defend this action. Given that the action is exclusively for declaratory and
12 injunctive relief there should not be any conflict between the named and
13 absent Defendant Class members. Similarly, this action focuses almost
14 exclusively on questions of law and is not particularly fact specific, as such if
15 the named Defendants' counsel adequately represents the named Defendants
16 in this action, they are also adequately representing the class.

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19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff Gina Kildahl, as Next Friend of SK, and as a class
21 representative, requests entry of judgment in her favor and against Defendants
22 SCHOOL DISTRICT OF FALL CREEK, SCHOOL DISTRICT OF FALL CREEK
23 BOARD OF EDUCATION, BROCK WRIGHT, ERIC RYAN, ANNMARIE
24 ANDERSON, JILL GESKE, COURTNEY KNEIFL, JOE SANFELIPPO, and Does
25 1-10 on behalf of themselves and those similarly situated, as follows:

26 A. For declaratory and injunctive relief.

27 B. Attorney Fees and Costs.
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DATED: December 15, 2021 FREDERICK B. MELMS Esq

By: /s/ Frederick Melms

Frederick Melms

Attorney for Plaintiff

Gina Kildahl